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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/814,378	03/30/2004	Douglas Phillips	1192-012/ddh	5498
21034	7590	04/19/2006	EXAMINER	
IPSOLON LLP 111 SW COLUMBIA SUITE 710 PORTLAND, OR 97201			WOOD, KIMBERLY T	
			ART UNIT	PAPER NUMBER
			3632	

DATE MAILED: 04/19/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

**Application No.**

10/814,378

**Applicant(s)**

PHILLIPS, DOUGLAS

**Examiner**

Kimberly T. Wood

**Art Unit**

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 08 February 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1 and 3-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1 and 3-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                                    |

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This is an office action for serial number 10/814,378.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1 and 3-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Watts 2004/0035992 in view of Kensey et al. (Kensey) 5,021,059. Watts teaches a visible displacement indicia (stepped gripping means on the edge of the cam members (5) in contact with crack). The stepped gripping members are capable of correlating the quality of cam placement in a rock. The visual indicia (paragraph 0071) can be observed from the side surface of the cam (310 or 700). Furthermore, the more relative movement between the cams the less cross-sectional area of the cams is seen and the less color is therefore seen. The intersecting markings in the middle of the cams indicates the quality of grip. Watts discloses all of the limitations of the claimed invention except for the indicia indicating when cam

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placement is not safe. Kensey clearly teaches that it is known to provide a color coded system for placement indicating that it is not safe to proceed (see column 8, lines 31 and column 10, lines 16) including degrees of severity being green and red indicia). Color-coding as supported by Kensey is well known in the art to indicate degrees of danger for example "green, yellow, and red zones" are known to indicate various degrees of danger. Red is known for stop or a high degree of danger, yellow is known for caution or a moderate degree of danger, and green is known for safety, highest degree of safety, or lowest degree of danger (for example stop lights and water safety). It would have been obvious to one having ordinary skill in the art to have modified Watts to have used the well known color coded zones of green, yellow (as well known, see Shivers 5,067,667), and red indicia as taught by Kensey along the stepped gripping means on the edge of each cam for the purpose of indicating the degree of safety of the device when placed in the cracked surface.

Claims 1 and 3-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jardine 4,184,657 in view of Kensey 5,021,059. Jardine teaches a visible placement indicia (stepped gripping means on the edge of the cam members (5) in contact with crack). The stepped gripping members are capable of

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correlating the quality of cam placement in a rock. The visual indicia can be observed from the side surface of the cam (5) as shown in figure 4. Furthermore, the more relative movement between the cams the less cross-sectional area of the cams is seen and the less color is therefore seen. Regarding claim 5, the intersecting markings in the middle of the cams indicates the quality of grip. Jardine discloses all of the limitations of the claimed invention except for the color coded zones/markings. Kensey clearly teaches that it is known to provide a color coded system for placement indicating that it is not safe to proceed (see column 8, lines 31 and column 10, lines 16) including degrees of severity being green and red indicia). Color-coding as supported by Kensey is well known in the art to indicate degrees of danger for example "green, yellow, and red zones" are known to indicate various degrees of danger. Red is known for stop or a high degree of danger, yellow is known for caution or a moderate degree of danger, and green is known for safety, highest degree of safety, or lowest degree of danger (for example stop lights and water safety). It would have been obvious to one having ordinary skill in the art to have modified Jardine to have used the well known color coded zones/markings of green, yellow (as well known in the art, see Shivers 5,067,667) and red indicia as taught by Kensey along the

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stepped gripping means on the edge of each cam for the purpose of indicating the degree of safety of the device when placed in the cracked surface.

### ***Response to Arguments***

Applicant's arguments filed February 8, 2006 have been fully considered but they are not persuasive.

In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

In response to applicant's arguments that Watts nor Jardine disclose visible placement indicia the examiner would like to point out that the visual indicia (paragraph 0071) can be observed from the side surface of the cam (310 or 700 of Watts and stepped gripping means on the edge of the cam members (5) in contact with crack of Jardine). Furthermore, the more relative movement between the cams the less cross-sectional area of the cams is seen and the less color is therefore seen. The intersecting markings in the middle of the cams indicates the quality of grip.

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In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, the suggestion, or motivation is in the knowledge generally available to one of ordinary skill in the art. Color-coding as supported by Kensey is well known in the art to indicate degrees of danger for example "green, yellow, and red zones" are known to indicate various degrees of danger. Red is known for stop or a high degree of danger, yellow is known for caution or a moderate degree of danger, and green is known for safety, highest degree of safety, or lowest degree of danger (for example stop lights and water safety). It would have been obvious to one having ordinary skill in the art to have modified Jardine or Watts to have used the well known color coded zones/markings of green, yellow (as well known in the art, see Shivers 5,067,667) and red indicia as taught by Kensey. Kensey addresses the particular problem of the

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applicant's invention in regard to the placement of the invention for safety indicating proper or improper placement of the device using color coded indicia.

### **Conclusion**

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kimberly T. Wood whose telephone number is 571-272-6826. The examiner can normally be reached on Monday-Thursday 7:30am to 5:00pm.




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The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Kimberly T. Wood  
Primary Examiner  
Art Unit 3632

April 17, 2006

  
KIMBERLY WOOD  
PRIMARY EXAMINER